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Solidarity under duress: Defending state vigilantism

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Abstract

May European Union (EU) member states, in the pursuit of enforcing the norms of 'EU justice', unilaterally adopt harmful policies that are ordinarily impermissible in the course of voluntary cooperation amongst democratic states? Though conditions of permissible vigilantism are strict and only rarely met, there are some basic EU duties the compliance with which each individual member state is permitted to enforce unilaterally. Such measures are sometimes permissible even if European community law says otherwise: to the extent that European law prevents states from enforcing these duties, it lacks authority.

Much of the existing political theory of the European Union (EU) is ideal theoretical in the technical sense, first introduced by John Rawls, that it seeks to work out normative principles under the assumption that people (and *peoples*) do what they ought to do according to our best normative assessment.[1] The question that this article seeks to answer falls squarely on the opposite side of this idea/non-ideal divide: starting with instances of wrongdoing on the part of some EU member states, I work out what individual other EU member states are permitted to do in order to enforce EU justice. To fix ideas, consider these two real-world cases:

> *Democratic Backsliding* Since taking power in 2010, Hungary's prime minister Victor Orbán and his fidesz party have enacted constitutional and legal changes that undermine the working of the free press, reduce judicial independence, threaten academic freedom, and allow the ruling party and its cronies to make disproportionate use of government resources, including EU subsidies and support funds. The reforms run counter to EU treaty obligations and, many believe, conflict with the EU's most basic values (rule of law, democracy, pluralism) enshrined in Art. 2 of the Treaty on European Union.[2]

Sea Rescue In the summer of 2019, Italy's government passed legislation to deter captains of rescue ships that were patrolling the Mediterranean to save the lives of shipwrecked migrants at the EU's borders. The new legislation visited draconian measures on sea rescue ships' captains that reach Italian harbors with migrants rescued at sea. The laws were condemned by human rights activists and migrant organizations, as well as the United Nations and EU member states.[3]

Are individual EU member states permitted to use economic and financial pressure to force other members, in cases like *Democratic Backsliding* or *Sea Rescue*, to retract unjust policies? If so, which policies and by what means? For example: Would France be morally permitted to delay or prevent the entry of Hungarian goods into its territory in order to force Hungary to withdraw its undemocratic reforms? Or: Would it be permissible for Germany to threaten the adoption of a law that prohibits German banks from purchasing Italian government bonds until the anti-sea-rescue legislation is repealed?

Abstracting from these cases, the more general aim is to inquire whether adopting policies that are ordinarily impermissible in the course of voluntary cooperation (notably: coercion, threats of unwelcome economic and financial consequences, and other forms of economic duress) sometimes become permissible against those violating norms of EU justice. The position that I defend is radical: there are "EU justice duties" the compliance with which each individual member state is (subject to considerations of proportionality, effectiveness, necessity, and authorization by those wronged) permitted to enforce against another EU member state by economic and financial threats and duress. Moreover, such threats and duress are sometimes permissible *even if* European community law says otherwise: to the extent that European law prevents states from enforcing these duties against other member states by these means, it lacks authority.

The argument unfolds as follows: Sections 1 and 2 define "EU justice duties" and address in more detail the kinds of failures of duty concerned. Section 3 describes a number of unwelcome strategies and explains how to go about judging their permissibility. Section 4 argues that violating at least some direct and indirect EU justice duties renders offenders liable to enforcement through economic duress. Section 5 further substantiates the permissibility of enforcement by showing that, even though such policies impose costs on third parties (who have not forfeited rights), these parties can sometimes permissibly be compensated or asked to bear proportionate costs. Section 6 responds to the objections that *unilateral* enforcement, even in those scenarios where I defend it, still amounts to inter-state vigilantism and is for that reason impermissible. Section 7 concludes.

Before I develop my argument, some caveats are in order: First, this article is about the morality of unilateral enforcement by means of economic activities or threats amongst EU member states, so all discussions of rights, wrongs, and liability refer to moral, rather than existing legal, rights, wrongs, and liability. Second, my inquiry here is limited to questions of moral *permissibility*—I do not argue that using coercive measures is what justice-pursuing states must all-things-considered do. The more narrow theoretical aim of my discussion is to show that in cases of non-compliance with some EU duties, non-compliers are morally liable to duress, and moreover, all further desiderata of permissible imposition of economic harm can be met in core cases. Third, I assume that those failing to comply with duties of justice lack a justification or excuse for so doing and I do not deal here with non-responsible rights violators.

1 | DUTIES OF EU JUSTICE

Not all duties are duties of justice, and not all duties of justice are duties of "EU justice", even for member states and citizens of this institution. Since the topic of my discussion is limited to the enforcement of "EU justice duties" by individual member states against others, we first need some demarcation of the relevant normative terrain. I will assume that duties of EU justice, as far as states are concerned, need to satisfy two conditions: First, these are duties that member states have in virtue of being members states. EU justice duties are thus distinct, on the one hand, from duties that states have toward their citizens qua citizens (notably the demands of social and political justice) and, on

the other hand, duties that states have toward any other state or non-citizen person simply in virtue of being a member of the community of states (cashed out, e.g., in terms of duties of non-aggression and duties of assistance to prevent massive human rights underfulfilments). Second, duties of EU justice are *directed* duties member states owe to other member states, or EU citizens, or the supranational institution, or a combination of these three.

What then are the special duties of justice following from EU membership? A theory of justice for my purposes is a theory of the rights, duties, powers, and liabilities that should be guaranteed by an institutional scheme. Consider familiar theories of social justice for the state: they stipulate that citizens have certain claim rights, for example, to political freedoms, non-discrimination, (perhaps equal) opportunities for benefit from public and private goods, and so forth. Correspondingly, they prescribe that other agents, most notably the state, are under a duty to guarantee and protect these rights. To be able to do so, the state holds actual as well as normative power—authority—to change the duties of others. For example, the state can create duties to pay taxes, to serve in the army, to refrain from imposing undue risks on others. So within the state, there will be two kinds of "duties of institutional justice": first, duties incumbent on the state to act and legislate, second, duties incumbent on other agents that the just state has posited in order to guarantee the rights of citizens.

In *one way*, the state case is simple, because we assume that the monopoly of enforcement and higher-order Hohfeldian power to create duties resides in a single entity. If we think about a theory of justice for a multi-level system like the EU, this assumption no longer holds. Here, our theory requires not merely a theory of claim rights by individual persons or collective entities, but also a theory of powers to legislate and enforce certain issues by different collective agents. The thought is this: In developing a theory of justice for the EU we seek to strike a balance between, on the one hand, the autonomy-interests of political communities to work out aspects of their social, political, and economic conditions amongst themselves and, on the other hand, the individual interests of other persons (EU citizens and foreigners), and the interests of other collective agents (other member states and third countries).[4] Duties of EU justice are then those that it would, under full compliance, be the responsibility of an ideal European legislator to (legally and institutionally) create and to protect.

For example: Suppose the balancing of interests yields the substantive view that EU justice requires an EU-wide socio-economic minimum,[5] but that above this minimum, states are free to structure and organize their welfare state system to give expression to their community's conception of justice. The ideal EU authority would have a duty to implement or codify the institutional machinery for guaranteeing the provision of this minimum for each EU citizen, either by directly collecting resources and redistributing them or ensuring that other agents (states) put in place such a mechanism. On the other hand, member states, would, as far as EU justice is concerned, be under a duty to comply with the EU authority's fair organization of rights and duties. Yet states would retain the power right and duty to implement domestic social justice prerogatives (consistent with the minimum) amongst their citizens and other residents.

Though I will not be able to spell out a full catalog of EU justice duties incumbent on states, we can nonetheless gain some idea of what they are in thinking about the potential sources of such obligations: Two kinds of obligations seem especially pertinent, namely, first, promissory obligations toward other members and the supranational institution which derive from the treaties to participate in the joint venture and, second, obligations of fairly sharing benefits and burdens stemming from the provision of public and private goods that the EU facilitates for all member states and EU citizens (e.g., peace, economic stability, well-functioning markets, shared currency arrangements, common environmental protection etc.). To these widely acknowledged ones, we should add, I believe, two additional ones: Third, what I would call duties of *entanglement*: these are duties toward one another that derive from the fact that states pool resources and mutually share authority structures. As a result, states' and EU citizens' prospects and choices are heavily dependent on each other, and, for that reason, are more likely to dominate one another in the pursuit of their aims,[6] more likely to cause each other to wrong third parties, more likely to cause third parties to believe—correctly or not—that the member state authorized or endorsed the wrongdoing etc. Fourth, duties of solidarity, that is, duties that are grounded in the special character of the relations amongst member states and EU citizens that the institution rightfully aims to create and uphold. Solidarity finds expression in reciprocal obligations to aid and assistance, but also in duties to implement and uphold certain common values and norms that express this

community of values domestically and guarantee that the rights that EU citizens have qua EU citizens are implemented and have fair value across the union.[7]

This brief sketch shows that EU justice is normatively special in at least two respects when compared to less extensive institutions beyond the state: First, the grounds of duties go beyond standard ideas invoked in international affairs in that member states commit to upholding certain relationships amongst each other and their citizens. Second, the institution is sufficiently complex, intrusive, and autonomous from its constituting members to owe duties to individual persons under its authority.[8]

2 | EU JUSTICE DUTIES UNDER NON-COMPLIANCE

If, though impressionistic, this is the territory of duties of EU justice incumbent on states in ideal theory, then what kinds of duties must we consider under conditions of (partial) non-compliance? When agent A violates a duty owed to victim V, this changes the normative situation in various ways. For example, wronging V gives rise to A's *perpetrator duties* to compensate and apologize, and it may give rise to *third-party remedial duty* to bystander B to "pick-up-the-slack" and assist V. This article is not concerned with these, but with a different set of normative changes non-compliance creates, namely permissions that victims and bystanders have with regards to rights violators. Let us call these *enforcement rights*. These concern duties correlative to A's rights: B and V may ordinarily be under a duty not to use certain measures against A, or to provide A with some benefit, but they may now gain permission to use measures or refrain from providing benefits to get A to do what they have a duty to do. This change in duties toward A could, at least in part, explain the *permissibility* of enforcement action by each.

What follows from this abstract formulation for EU justice under non-compliance? First, compliant member states may find themselves in V's position. Where the duties that are violated are owed because of EU membership, for example where a member state fails to live up to a promissory obligation, does not do its fair share in cooperation, or violates the EU citizenship rights of its own or others' nationals, then the duties and permissions to enforce that result clearly are part of "EU justice." *Democratic Backsliding* is such a case: First, Hungary is defying treaty obligations toward other members and supranational institutions in the area of rule of law requirements. Second, Hungary violates different components of the demands of EU solidarity by flagrantly disregarding fundamental values and EU citizenship rights (both of its own citizens and those of other members state citizens residing within its territory). Third, Hungary is, through its various actions, also failing to do its fair share in providing the relevant goods of European integration: political cronyism undermines EU-wide market rules and fair competition, restrictions on academic freedom spoils the good of free and fair higher education across the EU, and defiance of Court of Justice for the European Union (CJEU) decisions undermines the good of peace and stability.[9]

Yet over and above this "direct" domain of non-ideal EU justice there are additional changes in normative relations following non-compliance that are properly called EU justice duties. These are the duties and permissions that member states come to have as a result of wrongdoing by another EU member state toward third parties, where such violations turn other members into "implicated bystander" because they make use of shared resources and/or authority structures. I think that when the changes in the normative permissions of the "implicated bystanders" *results at least in part from EU membership* or *violations of EU values*, then too we should speak of EU justice. Here is a stylized EU case of what I have in mind:

> *Trade Withheld* In order to punish a developing state V for putatively violating patents owned by a domestic pharmaceutical corporation, EU member state A refuses to ratify an EU trade deal that requires member state agreement, thus depriving V of income from selling agricultural products into the EU. But V is fully morally justified in infringing these patents because of the harm that its citizens would otherwise suffer.

In *Trade Withheld*, member state A, through its blocking of a collective agreement, *implicates* other member states in its wrongdoing by effectively depriving V of the possibility to trade with all of them in their name. So even though A's punishment primarily wrongs V, it can also be objected to by those others, given their interest in not becoming collaborators or "forced accomplices" in A's wrongdoing. Put slightly differently and in terms of the EU duties formulated above, we may say that A violates a duty of entanglement towards others. This is an important insight, for it establishes that as a result of cooperation and policy centralization, some "international wrongs" (the violation of duties that each state has qua being a sovereign member of the international community) take on a special relevance for those entangled with the wrongdoer in close cooperative mechanisms like the EU. Thus, under non-ideal circumstances, when one member state's wrongdoing towards non-members (states or third-country nationals) renders other member states *complicit* because of shared EU institutions or pooled resources, the resultant "indirect" special duties and permissions are part of EU justice.[10]

It is because of these indirect considerations that *Sea Rescue* forms part of EU justice: The EU's external border regime, though for the most part enforced through individual member states in its periphery, is best understood as enacted in the name of all members. For example: the various Dublin regulations,[11] and the European border and coast guard agency ("Frontex") are meant to coordinate and harmonize the approach to admitting refugees and questions of border control and policing. Moreover, agreements with non-member states regarding the sending back of migrants (e.g., to Turkey) are concluded bilaterally with the EU, thus demonstrate that external border regimes are enacted at least partly in the name of all member states. So when Italy imposes unjust measures at its borders—which are also the EU's external borders—the EU and its participant member states are rendered complicit in its wrongdoing.

3 | EU DUTIES AND ENFORCEMENT

Enforcement concerns situations where (i) a duty-holder is currently in violation of her duty, and (ii) some agent(s) act(s) in certain ways with the aim of stopping this violation or rights violations of this kind. Enforcement differs from punishment, which need not necessarily aim at bringing about compliance with moral rights. Some duties are unenforceable: When a colleague goes out of her way to help me with a request, I owe her a duty of gratitude. In addition, when it is my mother's birthday, I may well have a duty to call her. But nobody can enforce my duty of gratitude, nor is anybody permitted to infringe rights I ordinarily have in order to get me to call my mother. As far as enforceability is concerned, it is helpful to distinguish two situations: A duty is *in principle* enforceable if, in conditions C, another agent would not wrong the duty-holder if she imposed some costs or harms that the duty-holder ordinarily has a right against being burdened with in order to exert the duty-holder's compliance. A duty is de facto enforceable when it is in principle enforceable and C obtains, that is, there exists some agent, in this particular situation, that can impose the relevant costs and harms in pursuit of the goal without wronging the duty-holder.

Whether a duty is *in principle* enforceable depends on whether the norm violation of the duty-holder removes a right that the violator would have absent the violation. Enforcement is thus closely related to liability and right forfeiture, that is, the question under what conditions a person "is not wronged or has no standing to complain if [...] harm is imposed on him."[12] Whether the violation of the duty removes a right depends, in turn, on whether the loss of the protection that the right affords would be, first, *effective* and *necessary* to enable enforcers to end the violation of the duty and, second, whether the loss of the right would be *proportionate* to the gravity of the violation, which is a function, most obviously, of the importance of the interests that the duty protects but arguably also of degree of responsibility/culpability for the violation of the duty.[13]

These conditions in combination explain various cases where duties are *unenforceable*: when anything short of a disproportionate loss of rights of the violator would fail to make a contribution to ending the rights violation (e.g., my losing my right to non-interference in the relationship with my mother), or where no removal of rights would ensure compliance with the duty (e.g., where the duty is a duty to act for a reason, as is the case with gratitude), then the

duty is *in principle* unenforceable. By contrast, where the violator would not be wronged if some of her rights were infringed, but other factors make it impermissible for anybody to do so, the duty is merely de facto unenforceable.

Setting things up in this way is useful for our purposes: First, because thinking about liability targets the question on the specific rights that non-compliers may forfeit when they violate EU duties. Second, because this way of analyzing the issue clearly sets out the argumentative steps needed to show that economic threats to enforce compliance with norm-violations are permissible: First, we must show that violation of the duty renders the non-complying state liable to some specific consequence, that is, we show that the duty is *in principle* enforceable and by what means. Next, we evaluate whether the duty is de facto enforceable because there is some agent that can permissibly impose costs. This second task turns on considerations that go beyond liability and issues internal to it (narrow proportionality, effectiveness, necessity), namely whether the adoption of a particular strategy has consequences—other than those for the non-complier—that it would be impermissible to bring about. Finally, we can ask whether the duty that is violated is sufficiently weighty to ground *unilateral* enforcement.

3.1 | Economic duress as an enforcement strategy

Liability has the following form: *X is liable to have c imposed on her by Y in the pursuit of g*. In cases of enforcement, the goal to be pursued is that of ending or preventing duty violations. But the mere judgment that some duty is (in principle) enforceable does not yet tell us by what means or up to what level of costs the duty-violation renders the rights violator liable. Very generally, we can distinguish between two ways in which people can be brought to comply, that is, two forms of enforcement. First, we can get non-compliers to comply by using physical means or force: an agent liable to this kind of enforcement action has forfeited a right against physical interference. A second enforcement strategy is not physical but *communicative* (acting on the *will* rather than the body or property of the non-complier), and it consists in announcing that one will bring about an unwelcome response unless the duty violator complies. There are several moral questions concerning enforcement by threat, namely (i) a question about the permissibility of conditional announcements and threats, and (ii) a question about the permissibility of going through with what one has announced that one will do in response to continued non-compliance. To simplify matters, I will not consider cases here where, in order to end rights-violations, it may be permissible to threaten consequences but impermissible to go through and impose the threatened costs (or vice versa).

The specific threats that I focus on are those of negative economic consequences that norm-complying states address to norm-violators in the following form: "If you do not cease the rights-violation, I will impose economic and financial costs of level C on you!" The specific economic costs here are costs that individual member states would be entitled not to have to incur as a matter of EU justice if they were not in violation of their duty. In central cases, these "costs" would be imposed in the form of a withholding of benefits or opportunities for benefit (of gains from trade in goods, or freedom of movement, or the benefits of a common currency etc.). In the EU context, the policies that come to mind are primarily threats to infringe economic rights that other states have as a result of cooperation. Here is a non-exhaustive sample: threats to prevent the free flow of goods, services, or capital in and out of a member state, threats to limit or end freedom of movement, passporting of (banking) licenses, or threats to limit, or end risk-sharing and assistance schemes. What is notable about all of these is that *if* the non-complier would not be in violation of her EU justice duty, the enforcer would be in violation of her duties of EU justice.

There is a clear analogy between the kinds of threats and actions that I have described and the imposition of economic sanctions by some states or international institutions[14]: First, the economic threats envisaged within the EU context operate, like economic sanctions, indirectly by threatening to interfere with ordinarily permissible economic transactions. Second, like economic sanctions, the enforcement strategies within the EU envisage here stand in contrast to more *direct* strategies to end rights violations –notably physical enforcement (war) – as well as *political* sanctions, for example, in the form of exclusion from international institutions, public shaming, ostracism, and so forth.[15] These latter would correspond to the already-existing supranational procedures regarding the suspension of

voting rights in the European Council laid down in Article 7 of the Treaty on European Union, and the newly implemented "rule of law conditionality" of Covid-19 European aid to member states.[16] My focus here is on *unilateral* economic duress that differ from those listed in existing EU law. Third, the policies envisaged, like economic sanctions, may be targeted narrowly at the means that allow the duty-violator to execute the violation, or may be broader, aiming to impose costs that the targeted state wants to avoid. Finally, as we will see, economic threats in the EU, like economic sanctions, give rise to questions of burden-shifting and *wide proportionality*, that is, questions about their costliness to third parties and their consequences for the legal order.

The roadmap for the following sections flows from my earlier analysis of what needs to be established to show that unilateral economic threats are permissible: first I defend *in-principle* enforceability of direct and indirect EU justice duties by economic threats (Section 4). Next, I show that some, but not others are *de facto* enforceable because they do not impose unreasonable costs on third parties and can meet the condition of (presumed) authorization by victims (Section 5). Finally, I look at the objections to the special case of *unilateral* enforcement (Section 6).

4 | IN PRINCIPLE ENFORCEABILITY OF EU JUSTICE DUTIES

Some believe that all duties of justice are at least *in principle* enforceable. My claim in this section is more modest: at least some of the duties of EU justice are *in principle* enforceable, that is, those who violate their duties forfeit at least some rights held against some other agent seeking to enforce compliance that would violate their right absent the duty-violation. Recall that I defined duties of EU justice as duties that arise from membership and are owed to members (states or EU citizens) and listed two cases of defensive permissions and duties under non-compliance, namely, first, cases where the enforcing member state is itself (one of) the primary victim(s) of the EU duty-violation (direct), and, second, where the primary wrong is against a non-member, but member states gain rights and permissions because they are wrongfully implicated in the other member state's wrongdoing (indirect). In this subsection, I show that duty-violating states and other agents responsibly contributing to violations of EU justice duties are liable to economic threats for both of these kinds of infringements by explaining how they meet the conditions of proportionality, effectiveness, and necessity.

4.1 | Narrow proportionality

To illustrate a violation of direct EU justice duties, we may think of a member state that refuses to do its fair share in the provision of the public goods that the EU provides (e.g., implement market access), or a state that violates a treaty obligation that it has as a consequence of membership. In the case of the public good, either the good will not be provided (or be provided less comprehensively etc.), or some other agent or agents will be required to contribute to the provision over and above that which they would have a duty of fairness or reciprocity to provide. Similarly, in the case of a violation of a contractual obligation, the non-complying state's action makes it the case that some other state is wronged, has its reasonable expectations frustrated, her reliance exploited etc. Now not to have to make unfair contributions to the cooperative provision of a good and not to have one's reliance exploited are weighty interests that we are typically entitled to protect, even if this imposes some costs on the wrongdoer.

To assess whether the non-complying state loses a right against economic and financial threats, we must weigh the importance of these interests against the interest that the non-complier has in not losing its right against the threat of the imposition of economic duress. This is what "narrow" proportionality requires. If the only way to get the non-complier to comply would be by inflicting very serious harm, then this would fail to meet proportionality considerations and would wrong the non-complying state and its citizens. Crucially though, our weighing these interests to assess liability must factor in that the non-complier is morally responsible for causing a situation in which either its own protections are loosened, or others have to suffer the setbacks to their interests described above.

So if the consequences on the interests of non-compliers and compliers are even roughly equal in terms of costs, then we have strong grounds to conclude that, because the non-complying state is morally responsible for the fact that *somebody's* interests will need to suffer a setback, it is not wronged if it has to bear these costs.[17]

Of course, much will hinge on the specific economic threat and its consequences once implemented, over which there may be considerable uncertainty[18]: clearly, there will be some harsh measures that might disproportionally burden the non-complying state, and these will not meet the condition of narrow proportionality. After all, the likely interests of states and EU citizens that suffer as a result of non-compliance, though important, are rarely close to the suffering of serious human rights violations in the light of which many international economic sanction regimes are implemented. Yet on the other hand, the close connection between European economies likely provides much narrower and proportionality-respecting economic threats and strategies. For example, failure to contribute one's fair share to one part of the cooperative project could make a state liable to consequences that closely track the relevant burden that the state should have borne; or perhaps there are economic measures that would in a direct way lessen the benefits that the non-complier gains from this or other (semi-) public goods. Given the context of close cooperation and significant economic interdependence between member states, we can often think of practically feasible ways in which the violation of direct duties of EU justice makes the non-complier liable to suffer economic threats aimed at discharging her cooperative duties.

Since narrow proportionality concerns the balancing of the interests endangered as a result of non-compliance and the interests of the non-complier in losing the protections against economic threats (discounted for the fact that the non-complier's morally responsible actions are the reason that somebody's rights will be infringed), it seems clear that the proportionality condition is also met in indirect cases like *Trade Withheld* or *Sea Rescue*: if the imposition of economic threats can be permissible to make sure that a state cooperate fairly, then *a fortiori*, those means may be used as proportionate responses to get a state to comply with its duty not to contribute to people not having their subsistence needs met or to be rescued when shipwrecked at sea and the duty not to implicate third parties in this wrongdoing.

4.2 | Effectiveness

Even if some economic threats against non-compliers may be narrowly proportionate, it still remains to be shown that the loss of the corresponding right against economic duress is *necessary* and *effective* to ensure that the non-complier discharges her duty. In standard cases of interpersonal self-defense, the idea of effectiveness seems straightforward: a defensive action is effective if (and only if) it reduces the wrong that victim would otherwise suffer. Reductions can either (i) lessen the probability that the rights violation will occur or (ii) decrease the severity of the rights violation, for example, in terms of the harm that the victim will suffer.[19] Yet when we shift our focus to institutional scenarios and cases like *Democratic Backsliding* and *Sea Rescue*, things are more complex. First, we are dealing with compound wrongdoing: the "overall wrong" in *Democratic Backsliding* consists in a range of diverse rights violations that occur over an extended period of time and affect different agents. Economic duress could have quite disparate effects on various parts of this "overall wrong". For example, economic pressure could cause the Hungarian government to abandon *some* authoritarian measures in the domain of academic freedom, but it might have no effect at all on its attack on the rule of law or the repression of political opponents. Alternatively, economic duress may pressure Italy to relax the enforcement of the law's unjust aspects to some degree without actually leading to its revocation. Second, it was suggested above that at least in the institutional context of the EU, economic duress might also play a role in preventing future rights violations *of this kind*. In light of this, I want to suggest that economic duress as enforcement action is effective if it leads to net reductions in either the probability or completeness of at least some of the ongoing individual wrongs, or if it is probable to deter net future wrongdoing of a similar kind.

Now is there any indication that economic duress would be effective on this account? The best evidence we have stems from the literature on economic sanctions in the wider context of international politics. Though

historically considered ineffective, recent literature suggests that economic sanctions have been effective in roughly 35% and moderately effective in 51% of cases when they were used.[20] Moreover, their effectiveness *increases* with the degree to which sender and target states are both parties in meaningful alliances, and whether their relations prior to the imposition is characterized as "friendly" rather than "antagonistic". Beyond this, sanctions are more likely to be effective when used against democratic states because authoritarian rulers typically need to care less about domestic reputational costs.[21] Though this is subject to intense debates, there is also some evidence that (one-sided) economic dependence between target and sender increases effectiveness.[22] It is noteworthy that all of these factors would, if true, strengthen the case that economic duress is likely to be effective in the EU case where, arguably, democratic states generally are on good terms, are heavily economically intertwined, and so forth. One further important point to note is that the existing literature on sanctions defines effectiveness exclusively in terms of achieving the sender's stated objectives, thus leaving out entirely the deterrence angle of preventing future wrongdoing.[23] Such effects are difficult to measure, but arguably more likely to materialize if sanctions are imposed in a generally norm-abiding, interdependent community like the EU.

4.3 | Necessity

Even if effective, it must also be shown that unilateral economic duress is necessary, that is, there is no cheaper or less harmful way of achieving the goal. Importantly, the relevant costs here, again, are "morally weighted",[24] that is, those costs to be borne by the culpable rights-violator weigh less than costs to innocent bystanders or victims. So even if a member state could mitigate or cancel the effects of a duty violation in ways that would be less costly overall, but those costs would be borne by the victims or innocent parties, this would only count for the necessity calculation if these costs were much, much lower compared to an option of realizing the same result by imposing costs on the rights violator.[25] Second, the relevant standard of necessity is evidence-relative: where the enforcer is justified in believing that using these strategies imposes the lowest costs on non-complier consistent with getting her to discharge her duty, this is sufficient. Given what I said about the potential for "smart" policies in the EU context, it is well conceivable that economic *threats* would frequently meet the necessity criterion: one notable feature of threats as opposed to physical enforcement is that it offers the non-complier the option of not incurring the costs by complying with the demand.

But reflecting on necessity also reveals one element that will play an important role in our discussion of the justifiability of *unilateral* enforcement: when an institutional order contains adequate judicial remedies to address wrongdoing, to wit, where the most likely expected outcome of a rights violation is that the wrongdoer will be forced to comply (and compensate etc.) through authoritative enforcement mechanisms and fair legal procedures, then unilateral enforcement action, even when it imposes costs on the wrongdoer that are no higher than those that the legal system would impose, fails to meet the necessity condition. Why? Because the alternative of letting the collectively authorized institutions discharge their obligation of protecting rights and enforcing duties is morally much less risky than unilateral enforcement in that it is less likely to impose wrongful harm on the purported wrongdoer: fair judicial procedures tend to be more reliable in identifying wrongdoing, tend to be less frequently excessive, and tend to be less detrimental to the functioning of a rule-based system of enforcement in the future.[26] Thus, the best interpretation of the necessity condition maintains that a course of action is only necessary if (other things equal) it is least likely to impose wrongful harm.

The upshot for the cases of *Democratic Backsliding* and *Sea Rescue* is that unilateral enforcement action can only meet the necessity condition where existing collective institutional mechanisms and judicial procedures fail to adequately protect those suffering from the wrongdoer's action. Sadly though, there is every reason to believe that is the case: As far as the enforcement of indirect duties goes, there simply is no existing legal mechanism to protect third parties through the existing European legal order, let alone one that would be appropriate in light of the imminence and irreversibility of the rights violations in cases like *Sea Rescue*; and concerning the possibility of offering a remedy for those suffering from the violation of direct duties, for example, the case of *Democratic Backsliding*, the

existing mechanisms are wholly inadequate: procedures to reign in even flagrant violations of EU rights and values are subject to unanimity requirements of (non-perpetrator) members, which has meant that any two rights-violating states can perpetually prevent legal sanctions from coming into effect by upholding "fellow traveller vetos".[27]

Even absent legal avenues to effectively address a rights violation, risks to the continued existence of the institutional scheme still factor into our judgment of permissibility through calculations of necessity: There is a big difference, in terms of systemic risk, between extra-legal enforcement by a relatively large "coalition of the willing" (perhaps even one representing a majority of EU citizens) and a single-state enforcement threat action against another. Thus, in cases where a state could either convince others to form such a coalition and then impose costs on a rights-violation member, or could go ahead and do so unilaterally, necessity demands that it pursues the multilateral route because of these general risks of unilateral action. This does not, however, change the fact that even unilateral resort to economic duress may be permissible when no such options are available, or when unilateralism is likely to have a definitive advantage in addressing the serious rights violations (e.g., because it is more likely to end wrongdoing or will prevent it more comprehensively).

5 | DE FACTO ENFORCEABILITY: COSTS TO THIRD PARTIES AND AUTHORIZATION

We saw in Section 3 that *in principle* enforceability (liability) is only a first step toward a full justification of economic duress: posing an economic threat or enacting harmful economic policies in order to end wrongdoing may be impermissible even when it does not wrong the duty-violator because we also need to consider factors that shape de facto enforceability, namely, first, the condition that enforcement action does not impose unreasonable costs on third parties ("wide proportionality") and, second, the requirement of authorization by those wronged ("authorization"). My conclusion in this section is that these two requirements severely limit the permissibility of unilateral enforcement action in the EU context, especially those we called "direct". And yet, I suggest, they fail to rule out unilateral action for the most serious instances of direct and indirect non-compliance with EU justice in cases like *Sea Rescue* and *Democratic Backsliding*.

5.1 | Wide proportionality

In considering wide proportionality, we balance the interests of innocent (i.e., non-liable) third parties in not having to bear costs resulting from enforcement action against the weightiness of the interests of those whose rights are violated. Importantly though, we do not discount the interests of those who would suffer foreseeable but unintentional harm from economic duress in the way in which the wrongdoer's interests were discounted when we reflected on liability. Thus, whether enforcement strategy x is widely proportionate depends on the balance between the benefits that enforcement provides and the costs to third parties.

What are these costs? First, in light of the nature of economic duress in the EU context, namely that it would prevent or at least hamper economic transactions between two or more agents that would otherwise be beneficial and permissible, economic threats will impose tangible costs on third parties that have done nothing to forfeit their rights to gain from European cooperation. It is important to stress that these third parties may be found both within and outside of the non-complying state.[28] Even the threat of banning products from entering a state may have chilling and disruptive ripple-on effects across the EU and may burden third parties with significant costs.

Second, unilateral enforcement action inevitably imposes some risk to the continued existence of the cooperative scheme as a whole, a risk that affects all those that benefit from it. Absent authoritative legal structures, unilateral enforcement will often lead to retaliation, may be executed by agents who only *pretend* to believe, or who reasonably but falsely believe, that they are permitted to unilaterally enforce, and the like. Preventing endless rounds

of retaliation and revenge between parties that each think they are protecting their rights is one of the most crucial achievements of a functioning legal order. It is realized by prohibiting self-help or allowing it only in very exceptional circumstances. Even imposing a very small risk of systemic cooperative breakdown and anarchy on others constitutes a considerable burden.

So both the actual costs and risks to third parties are non-trivial and very likely to occur. It follows that for unilateral enforcement action to be permissible, the interests that are wrongfully set back absent enforcement would have to be weighty, and enforcement would need to be sufficiently likely to effectively remedy this. This renders unilateral enforcement action impermissible in the vast majority of cases where EU justice duties are violated because the interests are most often simply insufficient to permit imposing these costs and risks. For example: when a member state is forced to make an unfair contribution to the provision of the public goods the EU provides, or when it has a contractual promise breached, the interests at stake, though certainly weighty, cannot outweigh the rights that non-liable members have against having costs and risks of unilateralism imposed on them.

And yet, these economic costs to third parties are insufficient to rule out the permissibility of unilateral enforcement altogether. We see this by reflecting on those few exceptions where well-functioning legal orders permit self- and other-defense, namely when the violation is imminent and the interests that are affected by a rights violation are both weighty and urgent. Cases like *Sea Rescue* and *Democratic Backsliding* satisfy these features. Clearly, the interests at stake for victims of wrongdoing in these cases affect basic human rights, are thus absolutely fundamental. Moreover, these interests are urgent in the sense that once the violation has occurred, the harm to victims is either irreversible or very hard to compensate. Nothing similar is true for cooperative unfairness or breach of promise: it is almost always possible for states to be adequately compensated ex post.

To motivate this permission to impose even non-trivial costs and risks on non-liable third parties in such cases, we can appeal to the very plausible thought that we all have humanitarian duties to help others when burdens to us are low. So, for example, when we can rescue a drowning person at little cost, we are morally obligated to do. An analogous consideration applies to the cases under scrutiny here: since each third party would be morally required to incur *some* side-effect economic burdens of enforcement in order to guarantee basic human rights, the unilateral enforcer can impose these costs and risks if there is no effective alternative to protect the victims' rights.[29] This consideration also shows, again, why unilateral duress is typically impermissible in direct EU justice cases where fair reciprocity and contractual obligations are at stake: whilst we all have duties of humanitarian assistance and duties of rescue, and are liable to incur some costs in order to discharge them, we have no equally weighty and stringent duties to incur costs to protect the fairness of a given cooperative scheme, or make sure treaties are kept, even if we and others stand to benefit from such a practice.

Until now, I have treated direct and indirect cases alike. But I think there is at least one discontinuity between them that makes it *easier* to satisfy wide proportionality in cases where the primary wrong affects non-members (*Sea Rescue* and *Trade Withheld*): where, in order to protect oneself and other participants against unjust treatment, one's enforcement action imposes on others the risk of causing the breakdown of an otherwise justified and beneficial cooperative scheme, that risk counts against enforcement. That is the case because in imposing this risk, one increases the likelihood that others (including those suffering from the rights violation) will be deprived of something that they are entitled to. By contrast, where a cooperative scheme either foreseeably burdens outsiders with very serious harm, or where it enables some wrongdoers to wield commonly shared resources in the pursuit of their wrongful ends, the fact that enforcement action increase the risk of breakdown of that unjust scheme is something that counts *in favor* of that action: those who reap benefit from a scheme that either foreseeably harms third parties, or who recklessly allow individual participants to use pooled resources in the pursuit of wrongful aims (e.g., in *Trade Withheld*) have no claim to have their cooperative scheme protected.

5.2 | Authorization

Beyond the costs and risks that enforcement would impose on innocent third parties, the permissibility of enforcement is governed by a requirement of authorization by those who are wronged by the duty-holder's non-compliance. Consider standard interpersonal cases: Where somebody whose rights are threatened explicitly *forbids* bystanders to protect her by using defensive force against a liable attacker (e.g., when a mother does not want her son who is set to attack her to be killed in other-defense by a bystander[30]), the conclusion that other-defense on behalf of the victim about to-be-wronged is impermissible is "intuitively plausible."[31]

Such impermissibility of other-defense or the enforcement of another's right against their explicit will cannot be explained by reference to liability, that is, the just allocation of (responsibility-weighted) harm. Rather, enforcement in such cases, when it would be impermissible, would wrong the victim: they hold a kind of normative power to determine, to some extent, whether a violation of their right counts in the calculation of whether the rights-infringing party can be permissibly harmed.[32] Since in cases of large-scale other-defense (e.g., humanitarian intervention) we have overwhelming evidence for the conclusion that those whose rights will be violated authorize or can be presumed to authorize the defensive action, the requirement of authorization is not always discussed in the context of self-defense and war.[33] Yet once we think about authorization in *unilateral* EU enforcement scenarios, we find that it both limits the range of cases where economic duress is permissible and provides a further discontinuity between the de facto unilateral enforceability of EU justice duties in its direct and indirect variant.

To see this we must first separate some possible scenarios of the *direct* variant: In this category, we can distinguish between cases where the would-be unilateral enforcer is the only party suffering a wrong as a result of non-compliance (*self-defense single party case*) and other cases where the unilateral enforcer is just one of several parties that are wronged as a result of non-compliance (*multi-party case*). Now I am not sure whether, within direct EU justice, there are cases that are purely of the former kind: even where the direct costs of the failure to comply with direct EU duties (e.g., of burden sharing, or keeping promises, solidarity etc.) falls exclusively on a single state, there is also the risk of a breakdown of the cooperative scheme that is imposed on all. But let us assume that there are such cases. In *self-defense single party* cases, unilateral enforcement does not run into difficulty as far as authorization is at stake – there are no parties other than the enforcer who have a power right to control whether the non-complier's wronging them counts in a calculation toward defensive action.

But as I hinted at above, *most* instances of non-compliance in the realm of direct EU justice will wrong several and arguably all cooperating and treaty-abiding parties, that is, most cases are *multi-party cases*. Amongst these, we can distinguish between those where the wrong that the enforcing state suffers would be sufficient, if this were a *single party* case, to permit unilateral enforcement, and those in which the wrong the enforcer suffered permit enforcement only when combined with that of other wronged parties. Of these latter cases, it would be true that if these parties refused authorization, then enforcement action would be impermissible.

This matters greatly because we can interpret the existing European treaties as declarations of the intention not to authorize unilateral enforcement action: each state, in ratifying them, undertook not to engage in or endorse unilateral enforcement action but instead to submit to the authoritative rulings of the supranational institutions, most notably the CJEU. The significance of this point for the unilateral enforcement of direct duties is twofold: First, that each state, in unilaterally enforcing even something that it is all-things-considered entitled to enforce, is at least breaching a contractual or promissory duty not to engage in self-help. Notably, this duty is not only owed to the (liable) perpetrator against whom enforcement is planned, but against all other member states. The fact that those who engage in unilateral enforcement action would be wronging all those who reasonably relied on the assumption that unilateral enforcement was off the table matters for the question of proportionality: It is not clear, for example, whether wide proportionality is satisfied when the only way in which one can protect oneself or others from having a promissory obligation (say an EU treaty provision) or a fairness claim breached is to violate another promissory obligation or obligation stemming from reasonable reliance toward third parties. For this to be true, the urgency of the good protected by the relevant duty would need to be significantly weightier. The second point matters directly for

authorization: whilst we should not expect that each state's declaration is unconditionally binding whatever the cost, it has the consequence that would-be unilaterally enforcing state is not entitled, absent clearly expressed authorization by a sufficient number of parties, to *presume* the authorization of those whose agreement it needs in multi-party cases to obtain in order make the enforcement action permissible.

Now contrast this restricting role that considerations of authorization and reciprocal promises to refrain from unilateral enforcement play in the case of direct EU duties with the role that these play in cases where the fundamental rights of others are at stake. First, in the indirect cases that we investigated (*Sea Rescue*, *Trade Withheld*), the interests at stake for those whose rights would be violated are so crucial that any enforcer has warrant to presume that they would authorize enforcement action on their behalf. As Cécile Fabre notes: "the more serious the human rights violations that provide Sender [enforcer] with a just cause for sanctions, the greater reason there is to believe that victims would consent to sanctions if they could be asked, and thus the lower the evidentiary threshold for presumptive consent."[34] In the cases I sketched, the relevant harms at stake are comparable to those normally deemed sufficient to justify sanctions and more serious actions. That we ought to presume authorization is even clearer because in indirect cases (at least those discussed), the people suffering from the rights-violation do not also incur burdens resulting from the enforcement action (as all do when unilateralism threatens the continued existence of a valuable cooperative scheme).

Finally, even if we assume—plausibly, given that the European refugee system is under CJEU's jurisdiction—that the promise against unilateral enforcement entailed in the European treaties covers not only the violation of direct EU duties, but also the violation of duties toward outsiders, there is a crucial normative difference between direct and indirect cases: whilst it is within each state's moral rights to undertake a promissory obligation not to engage in enforcement to protect its own rights, a reciprocal agreement not to interfere in one another's violation of the moral rights of third parties is morally dubious because, if such agreements were morally binding, they would allow us to cancel our duties to protect victims of wrongdoing. Therefore, whereas considerations of to-be-wronged-party authorization and reciprocal agreement speak against unilateral action when it comes to the enforcement of direct EU justice duties of fairness, treaty observation and the like, no such countervailing considerations apply to indirect cases.

6 | OBJECTION: STILL IMPERMISSIBLE VIGILANTISM?

Many people, perhaps especially those convinced of the enormous merits of the European project, may nonetheless balk at my suggestion that individual European states may resort to extra-judicial means in order to force each other into compliance with moral duties. Perhaps the most consequential worry is that licensing states to unilaterally use these means against each other reinstates a form of interstate *vigilantism*. After endless wars and bloodshed between European states that have gradually managed to build for themselves a political and legal order based on the rule of law and quasi-legislative and judicial procedures. Under no circumstances should the continued existence of such an order be jeopardized.

6.1 | The instrumental objection to unilateralism

One version of the vigilantism objection is purely instrumental: The European legal order continues to be fragile and therefore *any* extra-judicial enforcement activity, likely to be followed by endless rounds of retaliation and revenge, creates a very serious risk of its break-down. A return to the earlier conflict-ridden system of unilateral threats and self-help would be infinitely worse than permitting these wrongs to occur. Thus, member states should, whilst of course making use of all legally available avenues to change the behavior of norm violators, never use means presently disallowed by the legal order.

It is true that a return to previous forms of intra-European relations would amount to a devastating loss. Moreover, the risk that institutions, even those that appear robust, break down because of non-compliance is real and almost impossible to predict reliably. It is precisely for these reasons that the argument throughout has been that unilateral self-help is impermissible in the vast majority of cases, and is impermissible (because unnecessary) whenever adequate legal routes to protect rights are in place. And, as suggested in Section 4, unilateral action is also impermissible where the formation of a broader "coalition of the willing" has equal chances of addressing the rights violation, precisely for the reason that this will pose less of a risk to the existing mode of cooperation.

Despite all this, I do not think that this purely instrumental objection succeeds overall, because it implausibly insists that unilateral enforcement remains impermissible even when all of these possibilities have been exhausted. First, the empirical basis for the assumption that any extra-legal enforcement, no matter how inconsequential, significantly increases the risk of public order breakdown seems excessively pessimistic. For example, it does not seem outlandish to believe that at least sometimes, morally permissible but illegal unilateral enforcement action will work, that is, cause wrongdoers to desist without engaging in endless rounds of retaliation. If states are rational actors, then they will weigh the costs of continued non-compliance, retaliation, or giving in. In addition, in at least some cases, it seems that rational agents will opt for the latter (recall, also, our earlier discussion of sanctions: they do work at least in some cases).

Moreover, given the fact that all EU members are democratic states with functioning public spheres for political debate, it does not seem unrealistic to believe that those negatively affected by enforcement within a perpetrator state will persuade their government to desist from wrongdoing. This was one of the insights of our earlier discussion of economic sanctions: when democratic governments are domestically challenged in light of the costs of sanctions, they do, at least sometimes, cave in. A Northern Italian farmer, for example, might not care much what measures of border policing its government is implementing in the Mediterranean. But he will care a lot about whether he gets to sell his products abroad and is likely to be vocal about this. Over and above ensuring that victims are protected from wrongdoing, morally motivated unilateral enforcement may create an impetus for reform of the legal order so as to bring it closer in line with the actual demands of morality. It is not clear at all that such "norm entrepreneurship"—somewhat analogous to acts of civil/uncivil disobedience in domestic legal contexts—*undermines* the legal order's stability: it might have no impact on general compliance at all; or it might, if successful, have the positive long-term effect of increasing compliance since subjects feel that the order better tracks what morality actually demands.

Lastly, it is not obvious that even if the risks of breakdown are real, the normative assumption that intra-European public order must be protected at all costs holds: if the continued existence of such an order in fact hinges on some member states not being stopped from committing grievous wrongs, then perhaps we ought not to attach such overwhelming moral importance to it after all.[35] Moreover, the judgment that those who justifiably enforce duties should desist because of the likelihood that wrongful perpetrators will violently retaliate relies on controversial claims about how we allocate responsibility. Why not say that the breakdown is not the unilaterally enforcing party's fault, but the retaliating aggressor's?

6.2 | Unilateralism: intrinsically wrong?

A different version of the vigilantism objection connects it to a specific type of wrong that is distinct from the mere thought that unilateral enforcement may have bad consequences. The following definition captures this concern: (wrongful) vigilantism is the act of interfering with a legitimate authority's response to norm violations by usurpation. This requires some unpacking: First, vigilantism necessarily occurs against the background of a legitimate legal and political order that bars subjects from actively resisting a norm unless authorized by the authority. Second, whilst one can *interfere* with an authority's response to wrongdoing in many ways, one interferes *by usurping* when one acts as if one were vested with powers that only the authority legitimately holds. So vigilante actors purport to occupy a

public position that they do not in fact occupy—whether as agents rightfully charged with law enforcement, the criminal prosecution, or the metering out of legal punishment.[36]

With this account, we see the shape of an argument why vigilantism is morally problematic, independent of its consequences. Drawing on Kant, Anna Stilz has recently explained the (pro tanto) wrongness of unilateral enforcement like this: Since the use of force, conviction, punishment etc. in which a vigilant engages is not authorized omnilaterally, that is, in the name of all those subject to the public order, vigilantism necessarily violates at least two important goods.[37] First, the enforcer establishes a social hierarchy between themselves and those coerced into compliance, thus rendering it impossible for members of a community to live together as equals.[38] Second, the enforcer violates the autonomy of the coerced: even when the coerced action is what one had most (coercion-independent) reason to do, one's autonomy is compromised because one can no longer see these actions as properly one's own.[39] Since it always has these defects, vigilantism is morally problematic quite independently of whether it has repercussions for the public order as a whole.

We can easily connect Stilz's argument to the EU case: we defined European solidarity as the demands derived from upholding egalitarian relations amongst member states and their citizens. Unilateral enforcement violates these demands amongst member states because enforcers claim a superior status as quasi-legislators and judges of wrongdoing. Second, unilateral enforcers limit the collective autonomy or right to self-determination of coerced states by making it impossible to see actions as the proper exercise of their right to self-determination.

My response to this alternative explication of the wrong of vigilantism is this: Even if we accept that unilateral enforcement is pro tanto wrongful, there are clear cases where the value of solidarity and self-determination are outweighed by more urgent concerns, for example the need to prevent serious harm or the need to protect a valuable cooperative scheme. Whether the enforcement of any violation of an EU justice duty will be sufficiently weighty to overcome the reasons against unilateralism depends on balancing different considerations, namely, (i) the importance of the good that enforcement protects, (ii) the weightiness of solidarity and self-determination, and (iii) how seriously vigilantism would undermine these values. I want to argue that once we reflect on all of (i) through (iii) in the context of cases like *Democratic Backsliding* and *Sea Rescue*, we have reasons to doubt that either self-determination or EU solidarity can categorically rule out unilateral enforcement.

Take solidarity first: one first response is that where an enforcer seeks to ensure compliance with EU justice duties, solidarity has already been violated by the wrongdoer. Therefore, either solidarity is no longer to be had, or, solidarity can survive *some* adversarial actions toward one another, in which case it should also be able to survive unilateral enforcement in the service of preserving the moral foundations of this political community. How about the enforcement in relation to indirect duties? The best construal of the value of solidarity, it seems to me, sees it as conditional relative to the character of the group. Consider, for example, equality amongst members of the Ku Klux Klan or the "Ndrangheta: In these cases, the character and purpose of the group completely cancel any value we might see in relational equality. By extension, it seems plausible that the value of European solidarity too diminishes in importance if the continued existence of such solidarity *hinges on* the participants" being free to violate the rights of others.

Another important aspect relates to (iii): Given that vigilantism can consist in different ways of usurping public power, not all forms of it are equally damaging to European solidarity. Much will depend on the kind of power that is claimed. In the cases I have listed, what the unilaterally enforcing state claims for itself is only the right to respond with a view to prevention of perceived rights violations. But in claiming such a "defensive-executive" right, a vigilante need not *also* claim to occupy the role of legislator and/or judiciary. An enforcing state may very much regret that there is presently no proper legal avenue so that the protection of rights can proceed omnilaterally, may signal that it is willing to change legal norms together with others, and submit to the authority of a court when it comes to assessing its actions. In fact, signaling such willingness and seeking the broadest possible coalition for any type of enforcement action was amongst the prerequisites for such action to meet the condition of necessity and proportionality in Sections 4 and 5. I do not find it plausible to hold that a state still attributes to itself some higher moral status (as legislator and judge) that it denies to others.

Finally, consider self-determination: Autonomy, whether individual or collective, consists in having available valuable options to choose from and not being under the control of another (independence). It is true that one's autonomy is

compromised when others constrain our valuable options, even if the overall set of options from which we can choose remains sufficient for self-authorship. However, what would need to hold for the unilateral enforcement against serious rights violations to be autonomy-limiting is something much more controversial, namely that constraining another's options to do serious moral wrong limits their autonomy. Even if *some* loss of collective autonomy results from being unilaterally forced to refrain from wrongdoing, it is hard to see how this concern could outweigh the countervailing reasons stemming from the rights that would otherwise be violated in cases like *Democratic Backsliding* or *Sea Rescue*.

7 | CONCLUSION

The article investigated the permissibility of member state economic vigilantism in the service of enforcing different kinds of EU justice duties. After setting out the criteria that render enforcement by economic duress permissible, we evaluated whether these are satisfied in different scenarios where EU justice is met with non-compliance. Three key conclusions have emerged: First, that the bar for the permissibility of unilateral enforcement is extremely high because of the danger that a retreat into self-help poses for the European project as a whole. Yet, secondly, there are some flagrant and urgent violations that warrant such unilateral enforcement because the conditions of proportionality, necessity, effectiveness and authorization are likely to be met. Third, it was suggested that such enforcement is more likely to be permissible, when, other things equal, the primary wrong is "indirect", that is, one that affects non-EU members that do not also gain from the existence of an overall beneficial scheme of economic and social cooperation.

I want to close with a broader observation: whilst there is a large literature on various forms of legitimacy in the European Union, and there is by now also growing body of work that reflects on questions of distributive justice in the EU, hardly any effort has gone into assessing non-ideal or remedial justice. Whilst this article has made a first step toward analyzing one part of non-ideal justice concerned with perpetrator rights and enforcement, much more work is needed, for example, on questions of *perpetrator duties* (e.g., reparations in the context of unfair monetary cooperation between members) and *third-party remedial duties* (e.g., duties to "pick up the slack" for individual and collective failures in the ongoing migration crisis). Given the clear need for philosophical analysis and normative guidance in these areas, we should hope that this gap will soon be closed.

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ENDNOTES

[1] Rawls (1999, 7–8).

[2] Freedom House (2020), Bayer (2020).

[3] Deutsche Welle (2019).

[4] Collective autonomy interests derive from interests of the individuals that make up the collective; they exist when (and because) these individuals have a sufficiently weighty interest in jointly and exclusively exercising their autonomy interests in some domain cf. (Margalit and Raz (1990), Wall (2007).

[5] Van Parijs (2019), Viehoff (2017).

[6] Richard Bellamy develops an account of justice amongst EU member states specifically in terms of (Republican) non-domination (Bellamy, 2017; Bellamy, 2019).

[7] European Union (2016): Art.80, Sangiovanni (2013, 213).

[8] A fuller account of justice for the EU is developed in (Viehoff, 2019).

[9] Hillion (2020).

[10] For different causal and non-causal accounts of complicity, see: (Gardner, 2006; Kutz, 2000; Lepora & Goodin, 2013). For a discussion of how we are wronged when others use shared resources and authority arrangements "in our name", see: (Lazar, 2016, 215–16).

[11] Regulation (EU) No 604/2013, 2013, 180:604.

[12] (Quong, 2015, 146; McMahan, 2009, Section 1.1). On a diverging account, liability is *explained* by what we would have an enforceable duty to incur to ensure some outcome obtains (Tadros, 2011, ch. 6).

[13] (Tadros, 2011, 131–32) I am assuming here the truth of "necessity"-*internalism* according to which liability is governed by considerations of necessity (for discussion, see: McMahan, 2016, 195; Frowe, 2016, 153).

[14] Fabre (2018), Pattison (2018).

[15] Pattison (2018, ch. 3–5).

[16] European Union (2016), Sandbu (2020).

[17] McMahan (2009; ch. 1), Tadros (2016, 112).

[18] Fabre (2018, 42–45).

[19] McMahan (2016, 192).

[20] Pattison (2018, 52) citing Hufbauer et al. (2007, 158).

[21] Major (2012), Peksen (2019).

[22] Whang (2010), Whang et al. (2013).

[23] Pattison (2018, 54).

[24] Lazar (2012, 6).

[25] McMahan (2016, 185).

[26] Goodin (2019).

[27] Scheppele (2016, 3).

[28] Which agents and what part of a member state's citizenry then should count as liable and which one should not? I lack the space to develop a full account of citizen liability for democratically enacted choices. For two plausible accounts, see: (Pasternak, 2011; Stilz, 2011).

[29] Against this, one could suggest that rescuers lack a right to impose costs on third parties even if they wrongly fail to provide assistance. There are two responses to this: first, I doubt that it would be impermissible for a rescuer to impose any cost whatsoever. The weight of our autonomy interest in being permitted to act wrongly simply is not important enough to outweigh the interest of those to be assisted. Second, even if the costs that rescuers may impose are initially lower than those that third parties would have a duty to bear, this consideration is countered by the fact that if they refuse to provide this aid, the cost that the rescuer may impose results from the third parties' wrongdoing and could have been avoided . I thank an anonymous reviewer for prompting me to clarify this issue.

[30] McMahan (2010, 49).

[31] McMahan (2010, 49).

[32] Parry (2017, 371).

[33] Parry (2017), Buchanan (2015), Fabre (2018, 65–68) are exceptions.

[34] Fabre (2018, 67).

[35] The order is at least seriously defective in this respect: it fails to live up to its obligation to protect citizens and non-citizens from serious wrongs.

[36] Philosophers discussing extra-legal enforcement rarely provided a clear definition of vigilantism (for an exception, see: Dumsday, 2009, 50–51). My account stresses those elements central to most uses of the term (e.g., Estlund, 2008, 140; Stilz, 2019, 98ff; Hussain, 2012, 115; Barry & MacDonald, 2018, 322; Ferzan, 2013, 620; Goodin, 2019, 80).

[37] Stilz (2019, 97).

[38] Stilz (2019, 98).

[39] Stilz (2019, 99).

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